coming into the household of a woman whom the respondent ultimately took as his second wife, and that was the reason why she left him. Her reason for leaving the house on the second occasion was that she resented being assaulted in the presence of the other woman. To my mind there is nothing more humiliating for a first wife than to be assaulted in the presence of a second wife, especially when the second wife had originally come into the household truly or ostensibly as a domestic servant. The haughtiest of women may be prepared to put up with her husband's ill-treatment when she is the sole mistress of the house, but the meekest of them would resent any humiliating treatment in the presence of the other wife.

A wife is entitled to live with that amount of decency and dignity which prevails in her class and if the treatment of the husband towards her does not permit her to lead such a life, his conduct amounts to a neglect and refusal to maintain within the meaning of section 3 of the Ordinance. In my opinion the learned magistrate in coming to his conclusion that the wife's petition in this case should be dismissed was largely influenced by the fact that because a Hindu living in this country is entitled to marry as many wives as he likes, none of his wives is entitled to live apart from him and claim maintenance even if she is ill-treated. In being so influenced he failed to appreciate that social conditions and living conditions today are not the same as when the duties of a Hindu wife were first laid down by the law-givers. To use the words of Ramaswami J. in *Ponnambalam* v. *Saraswathi*,[5] "Hardships which wives were prepared to endure in the past, they are not prepared to endure now and I cannot impose upon them anti-diluvian requirements of domestic Hindu households at the present time."

As I have stated above, there was ample evidence to support a finding by the learned magistrate that the appellant had sufficient cause for living apart from the respondent. I would therefore set aside his order dismissing the application.

In the normal course I should remit the case to the magistrate to give the respondent an opportunity to be heard and for the magistrate to make a finding as to the reasonable amount which the respondent should be ordered to pay for the maintenance of the appellant and her children. But, as Mr. Peddie has now informed me that he had argued every point that could properly be taken on behalf of the respondent at the hearing of the application and that in any event he would not have called the respondent to give evidence before the magistrate, I feel that no useful purpose will be served in remitting the case to the magistrate.

In the circumstances, bearing in mind the amount which the respondent had paid the appellant over some considerable period, I make an order that the respondent do pay to the appellant a sum of $100 a month as maintenance for herself and her two children and that this order do take effect from 1st June, 1963. He must also pay the costs of this appeal and of the proceedings in the lower court.

Order accordingly.

Solicitors: *K. L. Devaser; Skrine & Co.*

MALAYAN BANKING LTD. v. RAFFLES HOTEL LTD.

[F.C. (Tan Ah Tah Ag.C.J., Chua and Ambrose JJ.) December 22, 1965]

[Singapore — Federal Court Civil Appeal No. 1 of 1965]

Company — Appointment of director — Whether person who is not member of a company or party to the articles can acquire rights under articles — Companies Ordinance, (Cap. 174), s. 22(1).

This was an appeal against the decision of Winslow J. (reported in [1965] 1 M.L.J. 262).

In July 1933 the benefit of the lease of the land on which part of the building known as Raffles Hotel stands was assigned to the respondent company for the remainder of the unexpired term of 70 years subject to all the convenants and conditions contained in the original lease. Subsequently in 1963 the appellant company acquired the leasehold reversion of the said land subject to and with the benefit of the original lease. The appellant company was thus in the position of lessor and the respondent company lessee thereof.

Clause 14 of the original lease provided that the lessee should not without the previous licence in writing of the lessors assign or sublet the premises or any part thereof, such licence not to be unreasonably withheld. It also provided that if the assignee or sub-lessee be a limited company no consent shall be given unless the articles contained a provision that from time to time during the continuance of the demise the lessor shall have power to appoint a director not subject to retirement by rotation, but any director so appointed shall not be a person interested in or connected with any business of a similar nature to the lessee. Article 77 of the articles of association of the respondent company provided that the lessor may appoint, *inter alia*, itself to be a director of the company.

The appellant company in pursuance of the said article purported to appoint itself as director of the respondent company and the respondent company sought declarations that article 77 must be read in conjunction with clause 14 of the lease and that the appellant bank's appointment as a director pursuant to article 77 was invalid and alternatively for a declaration that the appellant bank cannot act as a director of the respondent company and an injunction to restrain the appellant bank from purporting to act as such director.

The learned judge held that (1) article 77 of the articles of association of the respondent company did not confer any contractual right on the appellant company to appoint itself a director of the respondent company; (2) clause 14 of the lease did not confer any such contractual right on the appellant company; (3) in the absence of a binding contract entitling the appellant company to appoint a director of the respondent company the right given by article 77 to the appellant

company could not be enforced against the respondent company; (4) clause 14 of the lease did not confer any contractual right on the lessees.

The appellant company appealed against the decision of the learned trial judge on the first and third points.

Held: (1) the articles of a company do not as between the company and a person who is not a member constitute a contract of which that person can take advantage and in this case article 77 of the articles of respondent company was not binding on the company as between the respondent company and an outsider;

(2) in the absence of any contractual right, the appellant company, being an outsider, could not take advantage of a power purporting to be given by article 77 and therefore the appellant company's appointment of itself as director of the respondent company in exercise of such power had no legal effect.

Cases referred to:—

(1) *Scott* v. *Frank J. Scott (London) Ltd.* [1940] Ch. 794.

(2) *Hickman* v. *Kent Or Romney Marsh Sheep-Breeders' Association* [1915] 1 Ch. 881 at p. 897 and 900.

(3) *Treloar* v. *Biggs* (1874), L.R. 9 Ex. 151.

FEDERAL COURT.

G. S. Hill for the defendant/appellant.

S. E. Teh for the plaintiff/respondent.

Cur. Adv. Vult.

Ambrose J.: The question raised by this appeal is whether the defendant company's appointment of itself as a director of the plaintiff company in exercise of the power purporting to be given to it by the plaintiff's articles of association is invalid.

The facts are not in dispute and are as follows. On the 31st December, 1925, the owners of part of the property known as Raffles Hotel, Singapore, leased it to A. Sarkies and M. S. Arathoon for a term of seventy years. The lease provides as follows:—

"And the lessees hereby covenant with the lessors as follows, that is to say:—

. . . . . .

14. Not without the previous licence in writing of the lessors to assign or sublet the said premises or any part thereof such licence not to be unreasonably withheld provided nevertheless that (a) if the assignee or sub-lessee be a limited company no consent shall be given unless the articles contain a provision that from time to time during the continuance of this demise the lessors shall have power to appoint a director not subject to retirement by rotation, but any director so appointed shall not be a person interested in or connected with any business of a similar nature to the lessees (b) in the case of a sub-lease no consent shall be given unless the sub-lessee shall become tenant of the lessors at the rent hereby reserved."

On the 11th September, 1931, M. S. Arathoon was adjudicated bankrupt. And on the 27th November, 1931, an order was made for the administration in bankruptcy of the estate of A. Sarkies, deceased.

By a deed of assignment dated the 6th July, 1933, the lease was assigned by the proper parties to the plaintiff company, subject to all the covenants and conditions contained in the lease.

The memorandum and articles of association of the plaintiff company were registered and the company was incorporated in Singapore on the 28th February, 1933.

Article 77 of the plaintiff's articles of association empowers the lessors and their assigns to appoint a director of the plaintiff company. The article is in these terms:—

"(1) The lessors to the company of part of the property known as Raffles Hotel Singapore under a lease dated the 31st day of December, 1925 and made between William Joseph Mayson and Mirza Mohamed Ali Namazie of the one part and Arshak Sarkies and Martyrose Sarkies Arathoon of the other part and the survivor of them and their or his assigns for the time being lessors of the said property may from time to time so long as the property so leased is held by the company appoint himself or one of themselves or any other person to be a director of the company and may from time to time remove any director so appointed and appoint another in his stead and John Harold Phillips, chartered accountant of Singapore, shall be deemed to have been appointed pursuant to this power.

(2) Any such appointment or removal shall be in writing served on the company and signed by the persons authorised to make the appointment or removal or by their or his agent authorised in writing."

By a deed of assignment dated the 25th June, 1963, the reversion was assigned to the defendant company. And on the 11th June, 1964, the defendant company, purporting to act in pursuance of the power contained in article 77, appointed itself by a resolution of its directors to be a director of the plaintiff company, and by a letter of the same date served notice of the appointment on the plaintiff company.

The defendant company owns the Malayan Finance Corporation Ltd. The latter owns more than 65% of the issued share capital in the Goodwood Park Hotel Ltd. The majority of the directors of Goodwood Park Hotel Ltd. are directors or employees of the defendant company or the Malayan Finance Corporation Ltd. or companies associated with them. The Goodwood Park Hotel Ltd. carries on the business of operating and managing hotels in Singapore.

On the 15th June, 1964, the plaintiff company instituted this action claiming:—

(i) a declaration that article 77 of its articles of association must be read in conjunction with clause 14 of the lease;

(ii) a declaration that the defendant company's appointment of itself as a director of the plaintiff company is in breach of clause 14 of the lease and invalid;

(iii) alternatively, a declaration that the defendant company cannot act as a director of the plaintiff company and an injunction to

restrain the defendant company from purporting to act as such director.

The defendant company disputed the plaintiff company's right to the relief claimed.

The action was heard by Winslow J., who gave judgment for the plaintiff company, declaring that the defendant company's appointment of itself as a director of the plaintiff company was invalid. The learned judge decided:—

(1) that article 77 of the plaintiff's articles of association did not confer any contractual right on the defendant company to appoint itself a director of the plaintiff company;

(2) that clause 14 of the lease did not confer any such contractual right on the defendant company;

(3) that, in the absence of a binding contract entitling the defendant company to appoint a director of the plaintiff company, the right given by article 77 to the defendant company could not be enforced against the plaintiff company; and

(4) that clause 14 of the lease does not confer any contractual right on the lessees.

The defendant company appeals against the decision of the learned trial judge as regards the first and third points. The submission of counsel for the defendant company proceeds as follows. Article 77 of the plaintiff's articles of association gives the defendant company the power to nominate a director for the plaintiff company. The article contains no restriction on the power. It is immaterial whether the defendant company has a contractual right to appoint a director for the plaintiff company. The defendant company has exercised the power and made a valid appointment under the article. It is not permissible to go outside the articles, look at the lease, and write into the articles something which is not there but is in the lease. The court has no power to rectify the articles of association under its equitable jurisdiction even if it is proved that those articles do not accord with what is proved to have been the concurrent intention of the signatories at the moment of signature: *Scott* v. *Frank J. Scott (London), Ltd.*[1] Counsel relies on the following passage from the case cited (at page 803):—

"Further the effect of registration of the memorandum and articles of a company under section 14 of the 1929 Act is to bind the company (which, as already stated, only comes into existence after the registration is effected) and the members thereof to the same extent and in the same manner as if they had respectively been signed and sealed by each member and contained covenants on the part of each member, his heirs, executors and administrators to observe all the provisions of the memorandum and of the articles subject to the provisions of the Act. It seems plain that this section does not admit of any rectification of the memorandum and articles apart from alterations under the express powers of the Act, for the only contract is a statutory contract in which the company is included by reference to the registered documents and to no other documents."

I will now deal with this submission. Section 14 of the Companies Act of 1929, which is referred to in the passage cited, corresponds to section 22(1) of the Companies Ordinance (Cap. 174), which provides as follows:—

"Subject to the provisions of this Ordinance, the memorandum and articles shall, when registered bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member his executors and administrators to observe all the provisions of the memorandum and of the articles."

In considering this section, it must be borne in mind that the articles do not in any circumstances, as between the company and a person who is not a member, constitute a contract of which that person can take advantage: see 6 *Halsbury's* Laws of England, 3rd edition, page 129, paragraph 270. As was said by Astbury J. in *Hickman* v. *Kent Or Romney Marsh Sheep-Breeders' Association*,[2] at pages 897 and 900 respectively:—

"An outsider to whom rights purport to be given by the articles in his capacity as such outsider, whether he is or subsequently becomes a member, cannot sue on those articles treating them as contracts between himself and the company to enforce those rights. Those rights are not part of the general regulations of the company applicable to all shareholders and can only exist by virtue of some contract between such person and the company, and the subsequent allotment of shares to an outsider in whose favour such an article is inserted does not enable him to sue the company on such an article to enforce rights which are *res inter alios acta* and not part of the general rights of the corporators as such.

. . . . . .

I think this much is clear, first that no article can constitute a contract between the company and a third person; secondly, that no right merely purporting to be given by an article to a person, whether a member or not, in a capacity other than that of a member, as, for instance, as solicitor, promoter or director, can be enforced against the company; and, thirdly, that articles regulating the rights and obligations of the members generally as such do create rights and obligations between them and the company respectively."

Counsel for the defendant company does not quarrel with the decision of the learned trial judge as regards the second point, namely, that the defendant company has no contractual right under clause 14 of the lease to appoint a director for the plaintiff company. It is, however, suggested that article 77 constitutes an offer capable of acceptance and that nothing beyond mere nomination of a director is required by the article. I am unable to accede to this suggestion. It is further suggested that as the defendant company is in the position of a defendant and not of a plaintiff it can rely on article 77 without depending on a contractual right. I am unable to accept this suggestion for the reason that the defendant company cannot, even as a defendant, take advantage of the power purporting to be

given by article 77 without having recourse to some contract between the defendant company and the plaintiff company conferring on the former a right to appoint a director of the latter. As regards the suggestion that the court has no power to rectify article 77, it must be said that the plaintiff company is not asking the court to rectify the article.

Counsel for the defendant company supports the decision of the learned trial judge as regards the fourth point, namely, that clause 14 of the lease confers no right in contract on the plaintiff company. Counsel's submission on this point proceeds as follows. Clause 14 contains a covenant on the part of the lessees not to assign without the previous licence in writing of the lessors. The phrase "such licence not to be unreasonably withheld" does not amount to a covenant on the part of the lessors but is merely a qualification of the lessees' covenant: *Treloar* v. *Biggs*.[8] The words in the proviso cannot create a new obligation and can only qualify the main part of clause 14. I accept this submission. And I take the view that the learned trial judge was right in deciding that clause 14 of the lease confers no contractual right on the plaintiff company.

For the above reasons I come to the conclusion that article 77 of the plaintiff's articles of association is not binding on the plaintiff company as between the plaintiff company and an outsider; that without having recourse to a contractual right the defendant company, being an outsider, cannot take advantage of a power purporting to be given by article 77; and that the defendant company's appointment of itself as a director of the plaintiff company in exercise of the power purporting to be given to it by article 77 is invalid, that is, has no legal effect. In the result, I would dismiss this appeal with costs.

Tan Ah Tah Ag.C.J.: I agree.

Chua J.: I agree.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Allen & Gledhill.*

TAN CHENG WEE v. NG HYE KOK

[A.C.J. (Buttrose J.) December 24, 1965]

[Singapore — District Court Appeal No. 20 of 1965]

Landlord and Tenant — Recovery of possession — Agreement to vacate — Whether amounts to notice to quit given by tenant — Control of Rent Ordinance (Cap. 242), s. 15(1)(f).

Landlord and Tenant — Protection of Control of Rent Ordinance — Whether tenant can contract to give up his right to claim — "Agreement" — Notice.

The plaintiff (respondent in this appeal) brought an action to recover possession of premises on the strength of an agreement to vacate signed by the defendant (appellant in this appeal). In consideration of the agreement the plaintiff paid $300 to the defendant. In the court below the learned district judge gave judgment for the plaintiff. On appeal the issue argued was as to whether the district judge was entitled to make the order for the recovery of possession.

Held: (1) a notice to quit and an agreement to surrender or determine a tenancy are essentially different in their nature. An agreement is the result of the consent of the parties whereas a notice to quit is altogether different. The essence of a notice to quit by the tenant is to determine the tenancy whether the landlord likes it or not;

(2) in this case the agreement in question did not amount to a notice to quit given by the tenant, therefore the plaintiff was not entitled to an order for the recovery of possession of the premises;

(3) a tenant cannot contract to give up his right to claim the protection of the Control of Rent Ordinance.

Cases referred to:—

(1) *De Vries* v. *Sparks* (1927), 137 L.T.R. 441.

(2) *Rajbenbach* v. *Mamon* [1955] 1 All E.R. 12.

(3) *Barton* v. *Fincham* [1921] 2 K.B. 291.

(4) *Brown* v. *Draper* [1944] 1 All E.R. 246.

DISTRICT COURT APPEAL.

N. A. Christopher for the appellant/defendant.

R. E. Redrup for the respondent/plaintiff.

Cur. Adv. Vult.

Buttrose J.: This is an action to recover possession of demised premises. The premises in question are to the right and rear of the ground floor of No. 19 Paya Lebar Road and were let by the plaintiff to the defendant at a monthly rental of $4.

It was not in dispute that the premises in question were "premises" within the meaning of the Control of Rent Ordinance (Cap. 242).

The plaintiff's case was that by a document in writing dated the 1st September, 1963 the defendant agreed to vacate the premises within three months from the date thereof and was paid $300 by the plaintiff, receipt of which sum the plaintiff alleged was acknowledged by the defendant.

The plaintiff's contention was that the defendant had thereby terminated the tenancy with effect from the 30th December, 1963. The defendant refused to vacate on that date and still remains in occupation of the premises. He denied signing any agreement to vacate or receiving the sum of $300.

The agreement to vacate is in the following terms:—

"Being compelled by circumstances, I, Wee Hai Kok — (the plaintiff) — hereby requests the various occupiers to move out within 3 months from today. Those who are willing please sign their names.

(1) Mr. Tan Ah Wee — (the defendant) — agrees and signs Tan Cheng Wee received cash three hundred dollars.